



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

October 19, 2022

BY ECF

Hon. Loretta A. Preska
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: United States v. Lee, et al., 07 Cr. 0003 (LAP)
Hisan Lee v. United States, 17 Civ. 8567 (LAP)

Dear Judge Preska:

The Government respectfully requests a stay of the defendant's motion to reconsider the Court's opinion and order denying the defendant's motion submitted pursuant to 28 U.S.C. § 2255 pending resolution of the defendant's appeal in *Lee v. United States*, No. 22-1117 (2d Cir.). The Government's opposition to the defendant's motion to reconsider is currently due on October 24, 2022.

On May 20, 2022, the defendant filed a notice of appeal from the Court's denial of the Section 2255 motion. On September 13, 2022, because the defendant failed to timely file a motion for certificate of appealability, the Second Circuit dismissed the appeal and returned the mandate to this Court. Since then, however, the defendant has moved for a certificate of appealability in the Second Circuit, and as of October 18, 2022, the defendant moved to reinstate the appeal and recall the mandate, which the Second Circuit has determined cures the previously defective request for a certificate of appealability. Accordingly, the defendant is actively pursuing the appeal of the Court's denial of his Section 2255 motion, despite having moved for reconsideration before this Court as of July 29, 2022. The Government respectfully requests that the Court, in its discretion, stay the defendant's motion for reconsideration pending resolution of the defendant's appeal, given both the appeal and the motion to reconsider seek review of the Court's order denying the defendant's Section 2255 motion. *See United States v. Jiau*, 536 F. App'x 140, 141 (2d Cir. 2013) (recognizing that "concerns for judicial economy generally counsel against adjudicating" Section 2255 motions during the pendency of a direct appeal).

SO ORDERED.

Handwritten signature of Loretta A. Preska in black ink.

10/20/2022

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney

by: s/ Cecilia E. Vogel
Cecilia E. Vogel
Assistant United States Attorney
(212) 637-1084

cc: Hisan Lee, *Pro Se* (by certified mail)

AFFIRMATION OF SERVICE

I, Cecilia E. Vogel, affirm under penalty of perjury as follows:

1. I am an Assistant United States Attorney in the Southern District of New York.
2. On October 19, 2022, I caused a copy of the foregoing to be served on the defendant via U.S. mail at the following address:

Hisan Lee
ID No. 59908-054
USP Big Sandy
P.O. Box 2068
Inez, KY 41224

Dated: New York, New York
October 19, 2022

s/ Cecilia E. Vogel
Cecilia E. Vogel
Assistant United States Attorney